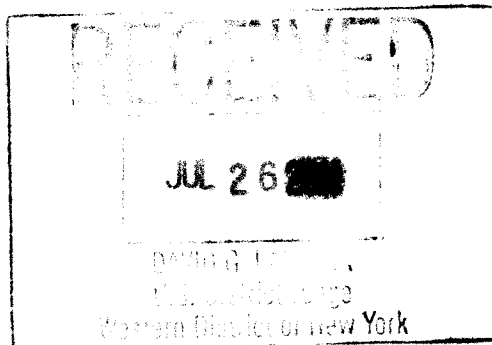


quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010 | TEL 212-849-7000 FAX 212-849-7100



July 25, 2011

WRITER'S DIRECT DIAL NO.
(212) 849-7145

WRITER'S INTERNET ADDRESS
robertwilson@quinnemanuel.com

VIA FEDEX

Honorable David G. Larimer
United States District Court Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: Gradient Enterprises, Inc. v. Skype Technologies S.A. and Skype, Inc., 10-CV-6712

Dear Judge Larimer:

This firm represents Defendants Skype Technologies S.A. and Skype, Inc. in the above-captioned case. I write regarding Skype Technologies' motion to dismiss the complaint pursuant to Rule 12(b)(6) for failure to state a claim and Rule 12(b)(5) for insufficient service of process. (Dkt. Nos. 14-18).

On May 3, 2011, counsel for Gradient filed an Affidavit of Service averring that a copy of the summons, complaint and asserted patent had been served on Skype Technologies on April 14, 2011. (Dkt. No. 13 at ¶ 2). Contrary to the representations in its attorney Affidavit, however, Gradient's attempt to serve Skype Technologies was defective in that Gradient did not serve a copy of the summons. Accordingly, Skype Technologies moved to dismiss the complaint pursuant to Rule 12(b)(5). (See Dkt. No. 15 at 11-12).

On June 8, 2011, Gradient again attempted service of Skype Technologies. On June 30, 2011, Gradient filed a second Affidavit of Service. (Dkt. No. 20). Consistent with Gradient's second Affidavit, Skype Technologies received a copy of the summons, complaint and asserted patent. Accordingly, Skype Technologies' motion to dismiss for insufficient service of process is now moot. However, Skype Technologies' motion to dismiss for failure to state a claim is unaffected by these subsequent events.

quinn emanuel urquhart & sullivan, llp

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-443-3000 FAX 213-443-3100

SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700

SILICON VALLEY | 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-3100

CHICAGO | 500 West Madison Street, Suite 2450, Chicago, Illinois 60661 | TEL 312-705-7400 FAX 312-705-7401

LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44 (0) 20 7653-2000 FAX +44 (0) 20 7653-2100

TOKYO | NBF Hibiya Bldg., 25F, 1-1-7 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 (0) 3 5510-1711 FAX +81 (0) 3 5510-1712

MANNHEIM | Erzbergerstraße 5, 68165 Mannheim, Germany | TEL +49 (0) 621 43298-6000 FAX +49 (0) 621 43298-6100

As set forth in that motion, and the corresponding motion of Defendant Skype, Inc., the complaint should nevertheless be dismissed because Gradient has failed to allege any facts in support of its claims that Skype Technologies and Skype, Inc. have infringed the patent-in-suit, either directly or indirectly. The total absence of supporting facts renders Gradient's complaint wholly deficient under the principles articulated by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). For this reason, Gradient's complaint should be dismissed in its entirety.

Respectfully submitted,

A handwritten signature in black ink, consisting of several fluid, overlapping loops and strokes, representing the name Robert B. Wilson.

Robert B. Wilson

cc: Dan O'Brien, Esq. (via e-mail)